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10/035,334

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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL WIEDEMAN, JOHN A. FRYE,
FRANK D. MOBURG, and MICHAEL TSAY

Appeal 2008-3454
Application 10/035,334
Technology Center 3600

Decided: January 27, 2009

Before WILLIAM F. PATE, III, JOHN C. KERINS, and
STEVEN D.A. MCCARTHY, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Michael Wiedeman et al. (Appellants) seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 6-8, 10, 12, 25 and 28.¹ We have jurisdiction under 35 U.S.C. § 6(b) (2002).

¹ The Examiner indicates that claims 14-24 are allowable, and has objected

An oral hearing was held on January 13, 2009, with William F. Westerman, Esq., appearing on behalf of Appellants.

SUMMARY OF DECISION

We AFFIRM-IN-PART.

THE INVENTION

Appellants' claimed invention is to a seat adapted for use in a vehicle having a floor and a roof, the seat having a central pillar extending from the floor to the roof, a center support extending forwardly from the central pillar, a lower rib extending laterally from the center support, a seat bottom directly fixed to the lower rib, a primary intermediate rib extending laterally from the central pillar, and a seat back fixed to the intermediate rib. (Appeal Br., Claims Appendix, claim 1).

Claims 1 and 25, reproduced below, are representative of the subject matter on appeal.

1. A seat adapted for use in a vehicle having a floor and a roof, comprising:

a central pillar extending from the floor to the roof of the vehicle;

a center support extending forwardly from said central pillar;

a lower rib extend [sic.] laterally from said center support;

to claims 2-5, 9, 11, 13, 26, 27, 29 and 30 on the basis that they contain allowable subject matter, but depend from a rejected base claim. (Answer 2).

a seat bottom directly fixed to and supported by said lower rib;

a primary intermediate rib extending laterally from said central pillar; and

a seat back fixed to and supported by said intermediate rib.

25. A seat adapted for use in a vehicle having a floor and a roof, comprising:

a central pillar extending from the floor to the roof of the vehicle;

a lower rib extend [sic.] laterally from said central pillar;

a seat bottom fixed to and supported by said lower rib;

a primary intermediate rib extending laterally from said central pillar; and

a seat back fixed to and supported by said intermediate rib.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Lohr

US 6,568,735 B1

May 27, 2003

The Examiner has rejected claims 1, 6-8, 10, 12, 25, and 28 under 35 U.S.C. § 102(e) as being anticipated by the Lohr patent.

ISSUE

The Examiner found that the Lohr patent identically discloses all elements set forth in the rejected claims.

Appellants urge that the Lohr patent does not disclose (1) a central pillar extending from the floor to the roof of a vehicle; (2) a seat bottom directly fixed to a lower rib; and (3) a seat back fixed to an intermediate rib.

The issue joined in this appeal is: have Appellants shown that the Examiner erred in finding that the Lohr patent discloses the contested claim elements?

FINDINGS OF FACT

The following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

FF 1. Appellants' Specification and drawings disclose a pillar 11 that is positioned at the center of two seats, and is preferable positioned along the centerline of a vehicle. (Specification, ¶¶[0015], [0016]; Figs. 1-3, 6, 7).

FF 2. The Lohr patent discloses a vertical structural support or pillar 11 that is central to two opposing seats that are secured to and supported by the pillar. (Lohr, Figs. 2 and 8).

FF 3. The central pillar 11 in Lohr is adapted to extend from a floor to a roof of a vehicle. (Lohr, Figs. 1-6, note that full height of pillar not illustrated).

PRINCIPLES OF LAW

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Anticipation under 35 U.S.C. Section 102(e) requires that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

Appellants argue for the separate patentability of each of claims 1, 6, 7, 8, 10, and 12. (Appeal Br. 8-15). Claims 25 and 28 are presented under separate headings as well, and Appellants expressly rely solely on the arguments presented for claim 1 for the patentability of these claims. (Appeal Br. 15).

Claim 1

The Examiner cites to the Lohr patent as disclosing a central pillar (11), a center support (7) extending forwardly therefrom, a lower rib (5) extending laterally from the center support, an intermediate rib (5) extending laterally from the central pillar, and a seat bottom (9) and seat back (8) supported by the ribs. (Answer 3). The Examiner further finds that the seat bottom includes frame members (3, 4) and that the seat back includes frame members (4, 6). (Answer 5). Appellants counter that the Lohr patent does not disclose a central pillar, a seat bottom directly fixed to a lower rib, or a seat back fixed to an intermediate rib. (Appeal Br. 8).

Claim 1 does not positively recite a vehicle as a claim element, giving rise to a question as to what the claimed “central pillar” is central to. The written record in this case has mainly treated the term “central” as being directed to the intended position of the pillar relative to a vehicle in which it is to be installed. (*See, e.g.*, Appeal Br. 9-10; Answer 4). Appellants additionally contend that the term “central pillar” is to be interpreted as a pillar being at the center of a pair of seats that are to be supported by the pillar. (Record of Oral Hearing, p. 3, l. 25-p. 4, l. 8). The Specification and associated drawings support both interpretations. (FF 1). Since claim 1 does not include the presence of a vehicle, it is reasonable and consistent with the Specification to interpret the central pillar element as requiring the pillar to be positioned at the center of a pair of seats.

The Lohr patent discloses a vertical support or pillar 11 that is central to two opposing seats that are supported by the pillar. (FF 2). The pillar is adapted to extend between the floor and the roof of a vehicle. (FF 3). Accordingly, Appellants have not persuaded us that the Lohr patent fails to disclose the claim element directed to the provision of a central pillar.

The Examiner takes the position that the seat back in Lohr is made up of the seating element 8, together with the vertically extending portions of frame members 3, 4 (identified in Answer as 4, 6), and that this seat back is fixed to and supported by an intermediate rib 5. (Answer 5). This is a reasonable interpretation of the teachings of Lohr, and, given the relative lack of structural limitations imposed on the claimed seat back in claim 1, we are not persuaded that the Examiner erred in finding that the Lohr patent contains structure that reads on the claimed seat back.

The Examiner employs similar reasoning in finding that the seat bottom of Lohr is made up of seating element 9 and the horizontally extending portions of frame members 3, 4, and that the seat bottom is directly fixed to and supported by lower rib 5. (Answer 5). This again is a reasonable interpretation of the teachings of Lohr, and we are not persuaded that the Examiner erred in finding that the Lohr patent discloses the claimed seat bottom.

Notwithstanding the reasonableness of the Examiner's findings with respect to the seat back and seat bottom, the rejection of claim 1 as being anticipated by the Lohr disclosure is flawed. The Examiner finds that the horizontally extending portions of frame members 3, 4, also identified more specifically by reference numeral 7, not only constitute part of the seat bottom, but also constitute the structure in Lohr that reads on the claimed "center support extending forwardly from [the] central pillar". (Answer 3). Consistent with the principle that all limitations in a claim must be considered to be meaningful, it is improper to rely on the same structure in the Lohr reference as being responsive to two different elements (seat bottom and center support) in claim 1. *See, Lantech, Inc. v. Keip Machine Co.*, 32 F.3d 542 (Fed. Cir. 1994)(in infringement context, a single conveyor held to not meet claim element requiring at least two conveyors); *In re Robertson*, 169 F.3d 743 (Fed. Cir. 1999)(claim requiring three separate means not anticipated by structure containing two means where one of the two means was argued to meet two of the three claimed means). The rejection of claim 1 as being anticipated by the Lohr patent thus can not be sustained.

Claims 6-8, 10, and 12 depend from claim 1, and the rejection of those claims under 35 U.S.C. § 102(e) will also not be sustained.

Claim 25

Independent claim 25 is identical in most respects to claim 1. Claim 25, however, does not require that the seat bottom be directly fixed to the lower rib, and, more significantly, does not call for the provision of a center support extending forwardly from the central pillar. Appellants contend that the rejection is in error for the same reasons presented with respect to claim 1. (Appeal Br. 15).

As can be seen from the above discussion of claim 1 and the structure disclosed in the Lohr patent, the sole error that exists in the rejection of that claim is the designation of elements 7 of Lohr as being *both* (1) components of the seat bottom, *and* (2) the structure alleged to constitute the claimed center support. Claim 25 does not require such a center support, therefore this source of potential error is not present in the rejection of this claim. For the same reasons as expressed in the analysis of claim 1 above, Appellants have not persuaded us that the Examiner's anticipation rejection is otherwise in error. The rejection of claim 25 will be sustained.

Claim 28

Independent claim 28 is also identical in most respects to claim 1. This claim calls for a "pillar" instead of the "central pillar" set forth in claim 1, and recites that the seat bottom is "fixed", rather than "directly fixed" to the lower rib.

The finding of anticipation of this claim relies on the same erroneous interpretation of the Lohr patent as does the finding with respect to claim 1. Namely, in order to reach the alleged anticipation of this claim, the horizontally extending portions of frame members 7 not only must constitute part of the seat bottom, but also must constitute the structure in Lohr that reads on the claimed “center support extending forwardly from [the] pillar”.

We will not sustain the rejection of claim 28 under 35 U.S.C. § 102(e).

CONCLUSION

Appellants have established that reversible error exists in the rejection of claims 1, 6-8, 10, 12, and 28 under 35 U.S.C. § 102(e). Appellants have not established that reversible error exists in the rejection of claim 25 under 35 U.S.C. § 102(e).

ORDER

The decision of the Examiner to reject claims 1, 6-8, 10, 12, and 28 is REVERSED. The decision of the Examiner to reject claim 25 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

vsh

Appeal 2008-3454
Application 10/035,334

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